IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.164/2003

Millennium Winery and
Distilleries,
Prop. Shri Ashok Kumar Lingala,
Mktg. Off: S-22, 2nd Floor,
Trionara Apartments,
Near Market Panaji, Goa. .... Petitoiner.

V/s.

1. State of Goa,
through Chief Secretary,
Panaji, Goa.

2. The Commissioner of Excise,
Panaji, Goa.

3. Chief Secretary,
Secretariat, Panaji, Goa. ..... Respondents.

Mr. S.S. Kantak, Advocate for the petitioner.

Mr. Guru Shirodkar, Addl. Govt. Advocate for the respondents.

CORAM: F.I. REBELLO, J.

DATE : JUNE 19, 2003.

ORAL JUDGMENT :

Rule. The respondents waive services. Heard forthwith.

2. By the present petition, the petitioner impugns Order dated 6.11.2002 passed by respondent No.2 and Order dated 12.3.2003, passed by respondent No.3. A show cause notice had been issued to the petitioner on the ground that the petitioners have

violated the provisions of the Excise Act and the Rules framed thereunder. The petitioner replied to the said show cause notice. Respondent No.2 placed the matter for hearing. The petitioners were, however, not present and consequently, by order of 6.11.2002, respondent No.2 passed order of adjudication against the petitioner herein.

3. Aggrieved by the said order, the petitioner preferred an appeal before the third respondent. Various grounds were raised in the said appeal. The third respondent, by Order dated 12.3.2003, was pleased to dismissed the appeal. While dismissing the appeal, the third respondent has gone on the footing that the only ground urged before him was that of lack of reasonable opportunity and consequently, failure of natural justice and fair play. The third respondent held that the appellant was given opportunity of hearing by the second respondent, but no one had appeared and, therefore, there was compliance with the principles of natural justice and fair play and consequently, dismissed the said appeal.

4. At the hearing of the appeal, on behalf of the appellant while impugning the order of the third respondent, it is contended that second respondent in

the show cause notice had not relied on the inspection which was done on 25.9.2002, yet while passing the impugned order, relied on the same and directed recovery of short paid duties. This ground, it is contended on behalf of the appellant, was specifically raised in the memo of appeal and was urged before the third respondent. In the petition filed, learned Counsel draws my attention to paragraph 14 wherein it has been urged by the petitioner that all the grounds raised in the appeal memo were urged before the third respondent, however, the same were not answered and decided by the third respondent.

5. Without going into the controversy, it is clear that at least one of the grounds raised was that the second respondent could have proceeded to direct payment of short levy of excise duty. Consequent to the inspection done on 25.9.2002, no opportunity was given to the petitioner herein. That was a ground raised in the appeal and has not been argued as there is no reply filed to the averments in para 14. In these circumstances, to my mind, impugned order will have to be set aside and the matter should be remanded to the third respondent for disposal according to law.

6. In the light of that following order:

The impugned order of the third respondent dated 12.3.2003 is set aside. Considering the disposal of the petition, the order dated 10.4.2003 stands recalled. The matter is remanded to respondent No.3 for rehearing the petitioner and disposal of the same according to law.

Rule made absolute partly accordingly. There shall be no order as to costs.

F.I. REBELLO, J.

ssm.